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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JAIK KOO,

Plaintiff and Appellant,

v.

WILSHIRE STATE BANK,

Defendant and Respondent.

A134975

(Contra Costa County
Super. Ct. No. C08-01693)

Plaintiff Jaik Koo appeals from a judgment entered in favor of defendant Wilshire State Bank (Bank) after the trial court sustained the Bank's demurrer to Koo's fifth amended complaint without leave to amend. Koo contends the court should have overruled the demurrer because he stated a viable cause of action for fraudulent conveyance against the Bank. On our de novo review, we conclude the trial court properly sustained the Bank's demurrer. We thus affirm.

BACKGROUND

The transaction at the root of this dispute was an apparent business deal gone awry, culminating in Koo's alleged loss of a \$500,000 investment. In a nutshell, Koo alleged that defendant David Y. Koh (also known as Yeung Seob Koh) induced him to purchase a \$500,000 interest in Rising Star YS, Inc. (Rising Star), an entity that owned a Holiday Inn Express (Holiday Inn). Koo, however, never received the return on his investment Koh had promised. Defendant Ha Sook Yang allegedly induced Koo to sell his share of Rising Star to her in exchange for a percentage of the net proceeds from the sale of the Holiday Inn. She and the Bank then collusively sold the inn in a "bundled"

transaction so that the net proceeds were too low for Koo to recoup his investment. As will be seen below, this theory evolved over a series of complaints, with Koo not alleging the Bank's involvement in the transaction until his third amended complaint—a complaint filed after the court had entered Yang's default and Koh was nowhere to be found. In other words, a filing that occurred after there were no other defendants from whom Koo could recover.

Original Complaint

On June 30, 2008, Koo filed a complaint against Yang and Koh. It alleged that in 2006, Koo entered into an agreement with Koh to purchase a 33 percent interest in Rising Star, a company owned and controlled by Yang and Koh. In turn, Rising Star owned and operated a Holiday Inn that was, according to Koh, a great investment that would financially reward Koo without his active participation. Koh represented that Koo would receive a return of \$5,000 per month on his \$500,000 investment. In fact, Rising Star did not own the Holiday Inn or any other tangible assets and the inn was not performing well.

The complaint alleged claims for fraud in connection with the sale of securities, deceit, rescission based on fraud, rescission based on failure of consideration, breach of contract, and common count. Although the complaint named both Koh and Yang as defendants in all causes of action, it did not allege any wrongful conduct by Yang.

First Amended Complaint

In July 2008, Yang demurred to the complaint. Prior to the hearing, Koo filed a first amended complaint, this time alleging claims for civil conspiracy, fraud, constructive trust, breach of contract, common count, rescission, and accounting, all asserted against both Koh and Yang who were again the only named defendants.

The first amended complaint repeated the allegations set forth in the original complaint, and then alleged for the first time that in April 2007, Yang proposed to sell the Holiday Inn and give Koo one-third of the profit. Yang represented that the inn would sell for not less than \$4.6 million and that Koo would be repaid his \$500,000 investment. On or about October 17, 2007, BJ Hospitality, LLC, purchased the Holiday Inn for \$4.2 million, although the seller's final settlement statement showed the selling price as

\$3.5 million, a discrepancy never explained to Koo. Koo alleged that title on the Holiday Inn was then conveyed back to Rising Star, a sham transaction designed to defraud Koo, who never recouped his \$500,000.

Yang demurred to the first amended complaint, which the trial court sustained on the grounds that the complaint was ambiguous and unintelligible. Koo was granted leave to amend to state a claim against Yang.

Second Amended Complaint

In February 2009, Koo filed a second amended complaint, again naming Yang and Koh as the sole defendants. It asserted causes of action for breach of written contract, fraud, civil conspiracy, constructive trust, and rescission against Yang and Koh, and common count and accounting as to Yang only.

The thrust of the second amended complaint remained the same, namely Koo's failed business dealings with Yang and Koh, though it added further details regarding the transactions. Koo alleged that when Yang contacted him in April 2007, she represented she would sell the Holiday Inn and give Koo one-third of the net profit if Koo would transfer his interest in Rising Star to her. Yang then "co-mingled" the sale of the Holiday Inn with another property in order to reduce the amount of money Koo would recoup from the sale of the Holiday Inn. No details regarding this "co-mingled" sale were alleged.

Once again, Yang demurred to all causes of action. The court overruled the demurrer to the breach of contract cause of action, and sustained without leave to amend the demurrers to all remaining cases of action.

Yang answered the second amended complaint on May 7, 2009.

Yang's Answer Stricken and Her Default Entered

On July 16, 2010, the trial court struck Yang's answer and entered her default for failing to respond to discovery and to appear at court-ordered conferences. Koh, whom Koo could apparently not locate, had not been served the second amended complaint.

Third Amended Complaint

On November 16, 2010, Koo filed a third amended complaint, naming the Bank as a defendant for the first time. To the prior allegations, Koo added the following details regarding the failed business deal:

In addition to Rising Star, Yang was a director, officer, and controlling shareholder of Stonebridge YS Investment, Inc. (Stonebridge). She and/or her corporations owned an America's Best Value Inn & Suites in Texas (Best Value Inn), as well as the Holiday Inn. The Bank had a secured loan on the Best Value Inn of approximately \$2.5 million. The Holiday Inn had a fair market value of at least \$6.4 million, while the Best Value Inn had a fair market value of no more than \$1 million.

In September 2007, both inns were sold in a "bundled" deal for \$7 million, with each property allocated a sales price of \$3.5 million. As a result, the Holiday Inn was sold for almost \$2 million below its fair market price, while the Best Value Inn was sold at almost \$2.5 million above its fair market price. This resulted in net proceeds for the Holiday Inn of merely \$1,021.34, such that Koo did not recoup any of his investment.

As to the Bank, Koo alleged that as a result of the bundling the two inns and allocating a higher than fair market value to the Best Value Inn, the Bank received more than \$2.5 million from the escrow of the Best Value Inn. If the true market value had been used as the sales price for the Best Value Inn, the Bank would not have been paid off on its secured loan from the inn's sale.

The third amended complaint added a twelfth cause of action for fraudulent conveyance. Asserted only against the Bank, it alleged that the transaction was a fraudulent conveyance under the Uniform Fraudulent Transfer Act (UFTA) (Civ. Code, § 3439 et seq.)¹ because the Holiday Inn was intentionally sold for significantly less than its fair market value for the purpose of defrauding Koo out of repayment of what was owed to him, while providing the Bank with full or near full payment on its secured loan

¹ All subsequent statutory references are to the Civil Code.

against the Best Value Inn. In so structuring the transaction, Koo alleged, Yang preferred one creditor (the Bank) over another creditor (Koo).

Koo further alleged that the Bank was a fraudulent transferee because it received the value that was fraudulently allocated from the Holiday Inn to the Best Value Inn. According to Koo, the Bank was liable to Koo for the full value of the asset transferred (\$2,640,000) pursuant to section 3439.08. He alleged that the Bank was not a good faith transferee because, on information and belief, “the Bank had in its possession, prior to the transfer, a fair market appraisal of the Holiday Inn showing that the Holiday Inn was valued at \$6,140,000.”

The Bank’s Demurrer to the Third Amended Complaint

On December 30, 2010, the Bank demurred to the twelfth cause of action. It argued that preferring one creditor over another did not violate the UFTA because section 3432 allows a debtor to do so. Alternatively, it argued that even assuming repayment of the Bank’s loan was a fraudulent transfer, the claim failed against the Bank because under the UFTA a creditor may obtain a judgment against the first transferee of the asset transferred only if the transfer is voidable. Under section 3439.08, subdivision (a), a transfer is not voidable against a transferee who takes in good faith for a reasonably equivalent value. Here, the Bank argued, Koo failed to sufficiently allege that the Bank did not take in good faith because the sole allegation of the Bank’s bad faith was that it had a \$6.14 million appraisal for the Holiday Inn in its possession.

On March 29, 2011, the court sustained the Bank’s demurrer with leave to amend. As pertinent here, it ruled: “In his Third Amended Complaint, the Plaintiff alleges that the Bank’s mortgage on the Best Value Inn was a legitimate antecedent secured debt. [Citation.] An encumbrance by a debtor is not fraudulent as to another creditor, under applicable provisions of the Uniform Fraudulent Transfer Act (Civ. Code, section 3439 *et seq.*) even though the transfer was a preference that resulted in the debtor being unable to satisfy debts of other creditors. [Citation.] [¶] Under the UFTA a creditor may obtain a judgment against the first transferee of the asset transferred, only if the transfer is voidable. [Citation.] Pursuant to Civ. Code, section 3439.08(e)(2), Plaintiff must allege

facts that show that the enforcement of the lien was collusive. Plaintiff has not met this pleading burden.”

Fourth Amended Complaint

On April 11, 2011, Koo filed a fourth amended complaint. In the general allegations, Koo added that the Bank conspired with Yang and Stonebridge to sell the Holiday Inn and Best Value Inn in a “bundled” deal, structured in such a way as to fraudulently transfer Yang’s equity from the Holiday Inn to Stonebridge.

To the twelfth cause of action for fraudulent conveyance, Koo added allegations that Yang owned the Holiday Inn while Stonebridge owned the Best Value Inn. He also alleged that the Bank was not a good faith transferee of the Holiday Inn’s falsely transferred value because, on information and belief, it had an appraisal of the Holiday Inn (but not the Best Value Inn) in its possession and it referred “to the new purchase money loan that it made against the Best Value Inn in escrow instructions as ‘a loan to purchase the *real properties*’ (emphasis in original).”

The Bank’s Demurrer to the Fourth Amended Complaint

On May 6, 2011, the Bank demurred to the fourth amended complaint, arguing that it failed to assert a fraudulent conveyance claim because it did not allege that enforcement of the Bank’s lien was collusive. Specifically, Koo did not allege that the Bank was aware of the supposed purpose of the alleged conspiracy (to defraud Koo), or of Yang’s deal with Koo in the first place. Nor could those facts reasonably be inferred from the allegation that the Bank had a \$6.14 million appraisal of the Holiday Inn in its file and that the escrow instructions referred to real “properties.” At most, the Bank argued, those alleged facts might have given the Bank constructive knowledge that something was amiss, but constructive knowledge could not support a fraudulent transfer claim.

Prior to the hearing on the demurrer, the court issued a tentative ruling sustaining the demurrer without leave to amend. It ruled in pertinent part: “In the Fourth Amended Complaint the Plaintiff alleged that the Bank knew that the Holiday Inn was undervalued and bundled the sale, however, it does not allege that Bank knew that Yang had

undervalued the hotel to defraud Plaintiff. [Citation.] The fraudulent conveyance statute requires actual, subjective knowledge by the alleged fraudulent transferee. The fiction of constructive knowledge is not enough.”

The matter then came on for hearing, after which the court took it under submission, later issuing an order sustaining the demurrer but granting Koo “one final opportunity” to state a claim against the Bank, admonishing him that “conclusory boilerplate allegations will be insufficient.”

Fifth Amended Complaint

On August 11, 2011, Koo filed a fifth amended complaint. After the passage of three years and five prior iterations of his pleading, Koo finally included general allegations that detailed the Bank’s purported involvement in the disputed property sale, as follows:

“18. Plaintiff is informed and believes and thereon alleges that, prior to August 10, 2007, Yang met with representatives of the Bank to discuss strategies to [sic] for Yang and Stonebridge to pay off the debt on the Best Value Inn, notwithstanding the fact that it did not have sufficient value to cover the debt. Plaintiff is informed and believes and thereon alleges that, in the course of those discussions with the Bank’s representatives, Yang informed the Bank that she also owned or controlled the Holiday Inn, and that the Holiday Inn had plenty of equity to cover the Stonebridge debt on the Best Value Inn. The only problem, Yang informed the Bank, is that plaintiff, Jaik Koo, had a claim against any net proceeds of the sale of the Holiday Inn, so that any payment to Mr. Koo would cut into the funds that Yang proposed to use to pay off the Best Value Inn debt.

“19. Plaintiff is further informed and believes and thereon alleges that Yang and the Bank analyzed the situation together and reached the conclusion that the only way for the Bank to get paid off on its loan secured by the Best Value Inn would be for the Bank to assist Yang in selling both hotels together in a bundled transaction that fraudulently transferred the equity in the Holiday Inn over to the Best Value Inn, in such a way that

the Bank would receive all the equity from the Holiday Inn and plaintiff would receive nothing.

“20. Plaintiff is informed and believes that the Bank and Yang then colluded to structure the sale of both hotels in such a way as to assign to both the Holiday Inn and the Best Value Inn the same value of \$3.5 million, even though both the Bank and Yang knew that such valuations were completely false and were fraudulent towards plaintiff. The Bank and Yang’s actual and avowed purpose in assigning the \$3.5 million value to the Holiday Inn, rather than its \$6,140,000 appraised value, was to wipe out plaintiff’s claim to one third of the net proceeds of sale. Thus, the Bank actually and subjectively knew when it participated in the bundled transaction that it was stealing funds that should have gone to Mr. Koo from the sale of the Holiday Inn and fraudulently transferring those funds to itself.

“21. By fraudulently transferring Yang’s equity in the Holiday Inn to Stonebridge, who was not a creditor of Yang’s, Stonebridge was able to obtain almost \$3 million more in the sale of the Best Value Inn than the hotel was worth; which allowed Stonebridge to pay off the Bank’s deed of trust owed by Stonebridge. In conducting the sale of the Holiday Inn in this bundled transaction, plaintiff alleges that the Holiday Inn was sold for approximately \$3 million below its fair market value, and the Best Value Inn was sold at approximately \$2.5 million above its fair market value.

“22. As a result of Yang, Stonebridge and the Bank agreeing to transfer the equity in the Holiday Inn to the Best Value Inn, with the two hotels being sold in this bundled transaction, the sale of the Holiday Inn on October 19, 2007 yielded net proceeds of only \$1,021.34; with the result that plaintiff did not recoup any of the \$500,000 that Koh and Yang owed to him. However, when the sale of the Best Value Inn from Stonebridge to Ben Hur closed on November 15, 2007, the Bank was paid \$2,524,430.16 to retire the Stonebridge debt and release its deed of trust on the property.

“23. Furthermore, as a result of the bundling of the two sales, and by allocating higher than the fair market value to the Best Value Inn, defendant Bank received more than \$2.5 million from the escrow of the Best Value Inn of which one third should have

gone to plaintiff. If the true fair market value had been used as the allocated sales price for the Best Value Inn, Stonebridge would not have paid off defendant Bank on its secured loan from the sale of the Best Value Inn. Plaintiff is informed and believes and thereon alleges that the Bank knew full well that it obtained that \$2.5 million benefit through the mechanism of the fraudulent transfer of the equity in the Holiday Inn to the Best Value Inn for the express purpose of denying Mr. Koo his share of the Holiday Inn equity.

“24. Plaintiff is informed and believes and thereon alleges that Yang could not have accomplished the theft of plaintiff’s money, and the manipulation of the sale price of the Holiday Inn to wipe out plaintiff’s claim to one third of the net proceeds, without the actual and knowing complicity of the Bank.”

The twelfth cause of action, still for fraudulent conveyance and only against the Bank, now alleged as follows:

“54. Plaintiff is informed and believes and thereon alleges that the sale and transfer of title to the Holiday Inn in the bundled transaction with the Best Value Inn was made with an actual intent of the Bank to hinder, delay, or defraud plaintiff in the collection of moneys that Koh and Yang owed to plaintiff. Such conduct violates the California Uniform Fraudulent Transfer Act, Civil Code section 3439 and following (the ‘Act’).

“55. The bundled transaction was a fraudulent conveyance under the Act, because Yang and the Bank actually and knowingly sold the Holiday Inn for a price that was far below its fair market value for the twin purposes of hindering, delaying and defrauding plaintiff with respect to the repayment of what was owed to him, and to provide Bank with full or near full payment on its secured loan against the Best Value Inn; which it would not have received but for the fraud against plaintiff.

“56. Although Civil Code section 3432 permits a debtor to prefer one creditor over another creditor, in this case, there is not one debtor preferring one creditor, defendant Wilshire State Bank, over another creditor, the plaintiff. Rather, Wilshire State Bank’s debtor was Stonebridge YS Investment, Inc., secured by the Best Value Inn; and

plaintiff's debtor and the owner of the Holiday Inn property was Yang. Thus, by selling the Holiday Inn below its market value, Yang and the Bank were able to hinder, delay and defraud plaintiff by paying him nothing from the proceeds of sale; while fraudulently transferring the Holiday Inn equity to Stonebridge, which owned the Best Value Inn, so that Stonebridge could pay its debt to the Bank.

"57. Under the Act, the Bank was a fraudulent transferee because (1) it knew that plaintiff was a creditor of Yang and knew that plaintiff was entitled to receive a share of the net proceeds from any sale of the Holiday Inn; (2) it knew that by devaluing the Holiday Inn to a value that just covered the secured debt and closing costs on the sale, plaintiff's claim to proceeds of the sale would be wiped out; and (3) it knew that by devaluing the Holiday Inn and inflating the value of the Best Value Inn that it would receive the value that was fraudulently allocated from the Holiday Inn to the Best Value Inn in payment of its under-secured loan to Stonebridge.

"58. Pursuant to Civil Code section 3439.08, as the transferee of the asset or the party for whose benefit the false allocation of value was made, and as a co-conspirator in the deal, Bank is liable to plaintiff for the full value of the asset transferred, which in this case was approximately \$2,524,000; the amount by which the Holiday Inn was devalued for the benefit of Bank and to the detriment of plaintiff.

"59. Bank was not a good faith transferee of the falsely transferred value of the Holiday Inn, and was a co-conspirator in the fraudulent transfer, because plaintiff is informed and believes and thereon alleges that (1) the Bank was told by Yang about plaintiff and his claim to a portion of the Holiday Inn equity; (2) the Bank had in its possession, prior to the transfer, a fair market appraisal of the Holiday Inn showing that the Holiday Inn was valued at \$6,140,000, and no appraisal of the Best Value Inn; and (3) the Bank discussed with Yang and agreed to participate in the assignment of false values to the sale of the Holiday Inn and the Best Value Inn for the purpose of taking the Holiday Inn equity away from plaintiff and giving it to the Bank; because the Bank knew that participating in the fraudulent transfer was the only way for it to get repaid on the Best Value Inn mortgage.

“60. In addition, plaintiff is informed and believes and thereon alleges that the Bank’s knowledge of plaintiff and his claim against the Holiday Inn equity, and the Bank’s intentional participation in and collusion with Yang in defrauding plaintiff of his rightful payment from the equity of the Holiday Inn, is evidenced by the Bank’s reference to the new purchase money loan that it made to Ben Hur against the Best Value Inn in escrow instructions as ‘a loan to purchase the real properties’ (emphasis in original), meaning both the Holiday Inn and the Best Value Inn. Plaintiff is informed and believes and thereon alleges that Bank would have received little or nothing from the sale of the Best Value Inn, if the Holiday Inn and the Best Value Inn had been sold outside of the bundled transaction for their actual fair market values.

“61. As a proximate and legal consequence of the Bank’s fraudulent and intentional misconduct as herein alleged, plaintiff was damaged in that Yang did not pay to plaintiff his one-third share of the true profits derived from the sale of the Holiday Inn, which plaintiff is informed and believes exceeded \$600,000.

“62. In order to remedy the fraudulent conveyance perpetrated by Yang and the Bank, equity demands that the Bank disgorge all of its ill-gotten gains from the fraudulent transfer in the amount of approximately \$2,524,430.16, according to proof.

“63. In performing the fraudulent and deceitful conduct herein alleged Bank acted fraudulently, willfully, maliciously, and with a wanton disregard for the rights of Koo, so as to justify an award of punitive and exemplary damages to be determined by the trier of fact under California Civil Code section 3294.”

The Bank’s Demurrer to the Fifth Amended Complaint

On September 28, 2011, the Bank demurred to the fifth amended complaint. It argued that the complaint was a sham pleading in which Koo had “made up new allegations to try to cure the defects” in the prior complaint. According to the Bank, Koo made up these allegations “out of whole cloth,” their “specificity . . . contradicted by the conclusory allegations previously pled that were based solely on the two documents.”

By order dated December 20, 2011, the court sustained the Bank’s demurrer without leave to amend. The court reasoned that “Under the UFTA a creditor may obtain

a judgment against the first transferee of the asset transferred, only if the transfer is voidable. Civ. Code, section 3439.08(b). Pursuant to Civ. Code, section 3439.08(e)(2), Plaintiff must allege facts that show that the enforcement of the lien was collusive. Despite being afforded an opportunity to amend, the Plaintiff has not met this pleading burden. [Citation.] A pleading made on information and belief is insufficient if it merely asserts the fact so alleged without alleging such information that leads the plaintiff to believe that the allegations are true. (*Does v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn. 5). Plaintiff alleges no such information. [¶] The fraudulent conveyance statute requires actual, subjective knowledge by the alleged fraudulent transferee. The fiction of constructive knowledge is not enough. *See, Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1858-1859.”

With that, the court dismissed the action as to the Bank and entered judgment in its favor.

This appeal followed.

DISCUSSION

1. Standard of Review

The standard by which we review an order sustaining a demurrer without leave to amend is well established. We review the order de novo, exercising our independent judgment on whether the complaint states a cause of action as a matter of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) In determining whether the complaint, liberally construed, states facts entitling the plaintiff to any relief, we assume the truth of all material properly pleaded facts, without affording any credit to contentions, deductions, or legal conclusions. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Financial Corporation of America v. Wilburn* (1987) 189 Cal.App.3d 764, 768-769.) While the decision to sustain or overrule a demurrer is a legal ruling subject to de novo review, the granting of leave to amend involves an exercise of the trial court’s discretion. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) We thus review the denial of leave to amend for abuse of discretion. (*Hayter Trucking, Inc. v. Shell Western*

E&P, Inc. (1993) 18 Cal.App.4th 1, 13; *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 655.)

2. The Trial Court Properly Concluded That the Fifth Amended Complaint Failed To State a Claim Against the Bank For Fraudulent Conveyance

A. The Trial Court Properly Required Koo To Allege Collusion

In his first argument, Koo contends the trial court improperly relied on section 3439.08, subdivision (e)(2) of the UFTA when it required that he “allege facts that show that the enforcement of the lien was collusive.” Section 3439.08, subdivision (e)(2) provides that “[a] transfer is not voidable under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05 if the transfer results from the following: [¶] . . . [¶] (2) Enforcement of a lien in a noncollusive manner and in compliance with applicable law, including Division 9 (commencing with Section 9101) of the Commercial Code, other than retention of collateral under Section 9620 and 9621 of the Commercial Code and other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation.” That section, he argues, “simply does not apply to the facts alleged here [because] [t]he Bank was not foreclosing its lien on the Best Value Inn when it colluded with Ms. Yang to shift her equity from her Holiday Inn property to the Best Value Inn.” This argument is misplaced because the UFTA required Koo to allege collusion as an element of his fraudulent conveyance claim, regardless of which subdivision the trial court cited in support of this requirement.

The UFTA, codified at section 3439 et seq., governs fraudulent conveyances. “A fraudulent conveyance is a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.” (*Yaesu Electronics Corporation v. Tamura* (1994) 28 Cal.App.4th 8, 13; see also *Estate of Heigho* (1960) 186 Cal.App.2d 360, 365-366.) A creditor may obtain a judgment against the first transferee of a fraudulently transferred asset only if the transfer is voidable. (§ 3439.08, subd. (b)(1).) A transfer is not voidable against a transferee who

took in good faith for a reasonably equivalent value. (§ 3439.08, subd. (a).) As stated in *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850, 1858: “ ‘[T]he term “good faith,” as used in this subdivision and subdivision (d) [of Civ. Code § 3439.08] means that the transferee did not collude with the debtor or otherwise actively participate in the fraudulent scheme of the debtor.’ [Citation.] ‘Fraudulent intent,’ ‘collusion,’ ‘active participation,’ ‘fraudulent scheme’—this is the language of deliberate wrongful conduct. It belies any notion that one can become a fraudulent transferee by accident, or even negligently. It certainly belies the notion that guilty knowledge can be created by the fiction of constructive notice.”

Thus, the UFTA clearly required that Koo allege facts showing that the Bank knowingly and intentionally defrauded him when it agreed to accept repayment of its loan in proceeds from the “bundled” sale.

2. Koo Failed to Properly Allege Collusion Between the Bank and Yang

In his second argument, Koo argues that even if the trial court properly required him to plead collusion—which it did—the fifth amended complaint included “ample” allegations of collusion between Yang and the Bank. The fifth amended complaint did indeed allege collusion, but not all “facts” alleged in a complaint are proper. And Koo’s allegations of collusion were not.

As detailed above, the fifth amended complaint alleged for the first time that the Bank knew about Koo’s interest in the Holiday Inn and colluded with Yang to deprive him of that interest. Specifically, Koo alleged that Yang met with representatives of the Bank to discuss strategies for Yang and Stonebridge to pay off the debt on the Best Value Inn. In the course of those discussions, Yang informed the Bank that the Holiday Inn had sufficient equity to cover the Stonebridge debt but that Koo had a claim to any net proceeds from its sale. Yang and the Bank concluded that the only way for the Bank to get paid off on its loan secured by the Best Value Inn was to bundle the inns together in a single transaction that would transfer the equity in the Holiday Inn to the Best Value Inn so that the Bank would receive full payment on its loan and Koo would receive nothing. According to Koo, the Bank knew that it was “stealing funds” that should have gone to

him. Koo alleged that the Bank was not a good faith transferee of the Holiday Inn's equity because Yang told the Bank about Koo and his claim to the Holiday Inn equity; the Bank had in its possession an appraisal of the Holiday Inn; and the escrow instructions referred to the new purchase money loan that the Bank made to Ben Hur against the Best Value Inn as "a loan to purchase the real properties."

Significantly, all of these allegations—with two exceptions discussed below—were alleged on information and belief. Pleading in such a manner can be an accepted method of pleading when the matters that are not within a plaintiff's personal knowledge "if he or she has information leading him or her to believe that the allegations are true. [Citation.] Often these facts are peculiarly within the knowledge of the defendant." (Moore and Thomas, Cal. Civil Practice Procedure (2012) § 7:18.) Critically, however, "these allegations must be accompanied by a statement of the facts on which the belief is founded." (*Ibid*; see also 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 398, pp. 537-539; *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792 ["Plaintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true."]; *J.J. Dowling v. Spring Valley Water Company* (1917) 174 Cal. 218, 221 ["there must be cases in which the knowledge of the fraud by its perpetrator must be charged on information and belief, but in such cases there must be allegations of facts which show positively or by reasonable inference that such knowledge must have been possessed by the person accused of the fraud."]; *Woodring v. Basso* (1961) 195 Cal.App.2d 459, 464-465 [plaintiff alleging fraud to avoid statute of limitations defense can allege defendant's knowledge on information and belief, but must also allege "a statement of the facts upon which the belief is founded."]). Missing here is that critical statement of facts.

Koo did allege two facts of which he had personal knowledge that he contends evidenced the Bank's bad faith: the Bank's possession of the Holiday Inn appraisal and escrow instructions referring to the "real properties." These two facts, Koo contends, support his inference that Yang told the Bank about Koo's interest in the Holiday Inn and that Yang and the Bank then together devised the bundled transaction so that the Bank

would receive payment on its debt while squeezing out Koo's equity interest. He claims this inference is a reasonable one, having previously asserted, "It is not unreasonable for plaintiff to infer that Yang met with the Bank and discussed the strategy of using a bundled transaction to steal Mr. Koo's equity for payment to the Bank, given that it is alleged that the Bank had the appraisal for the Holiday Inn property in its file prior to closing the transactions. The Bank did not order that appraisal. It is reasonable to infer that Yang gave it to the Bank to demonstrate to the Bank that it could get paid by shifting the Holiday Inn equity over to the Best Value Inn in the bundled transaction. That is not a stretch in the least."

It is indeed reasonable to infer that Yang gave the Holiday Inn appraisal to the Bank to demonstrate that it could get paid through the bundled transaction. It is, however, a complete and unreasonable leap to infer that at any point in the process Yang told the Bank about Koo's interest in the Holiday Inn and that the Bank agreed to the bundled transaction to defeat Koo's interest for the Bank's own interest. There are no facts alleged supporting a reasonable inference that the Bank knew of Koo's equity interest in the Holiday Inn, or that it even knew of Koo's existence. There are no facts alleged supporting a reasonable inference that the Bank had any involvement in setting the price for either hotel. There are no facts alleged supporting a reasonable inference that the Bank was plotting to defraud Koo, whose only alleged connection to the Holiday Inn was his side deal with Yang. Simply put, these two facts are insufficient to satisfy Koo's obligation to accompany information-and-belief allegations with a statement of facts upon which the belief is founded.

Koo urges a contrary result by repeatedly insisting that, at the demurrer stage, we must accept all material facts as the truth. In fact, we—like the trial court before us—are only required to accept the truth of *properly* alleged facts. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [courts "must assume the truth of the complaint's properly pleaded or implied factual allegations."]; *Glaire v. La Lanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918 [on demurrer, all material facts properly pleaded and all reasonable inferences which can be drawn therefrom are deemed admitted].) Facts

alleged on information and belief that are unsupported by a statement of facts showing them to be a reasonable inference are not properly pleaded, and are therefore properly ignored.

We thus must disregard Koo's allegations regarding the Bank's knowledge of Koo's interest in the Holiday Inn equity and its conspiracy with Yang to structure the sale in a manner designed to defraud him. In the absence of these allegations, Koo's claim for fraudulent conveyance fails. And because Koo does not argue that he should have been granted leave to file a sixth amended complaint, we need not consider whether the trial court abused its discretion in sustaining the Bank's demurrer without leave to amend.

DISPOSITION

The judgment for Wilshire State Bank is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.